



Montoya, Darlene <dmontoya@nmag.gov>

Policies and Procedures related to Officer-Involved Shootings and Other Use of Force Incidents

5 messages

Jamie Rose <jrose@co.eddy.nm.us>

Mon, Jan 23, 2017 at 1:50 PM

To: "dmontoya@nmag.gov" <dmontoya@nmag.gov>

Cc: Mark Cage <mcage@co.eddy.nm.us>, Arsenio Jones <ajones@co.eddy.nm.us>

Good afternoon Ms. Montoya,

We are in receipt of a letter dated January 20th requesting Policies and Procedures related to Officer-Involved Shootings and Other Use of Force Incidents, it is stated that the original correspondence was with former Sheriff Scott London. On January 1 Sheriff Mark Cage took office. Since taking office he has been diligently working on updating the ECSO policies and procedures, as soon as Sheriff Cage has this information we will send them to you.

Sincerely,

Jamie Lynn Rose-Redmond

Executive Assistant

Eddy County Sheriff's Office

1502 Corrales Drive

Carlsbad, NM 88220

(575) 887-7551

Montoya, Darlene <dmontoya@nmag.gov>

Mon, Jan 23, 2017 at 2:02 PM

To: Jamie Rose <jrose@co.eddy.nm.us>

Cc: Mark Cage <mcage@co.eddy.nm.us>, Arsenio Jones <ajones@co.eddy.nm.us>

Ms. Rose:

Is it possible to get the current SOPs, unless you feel Sheriff Cage will have this information by January 31st. Please let me know.

Thank you.

[Quoted text hidden]

—

Darlene Montoya, Administrator
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, New Mexico 87501
(505) 490-4854

Jamie Rose <jrose@co.eddy.nm.us>
To: "Montoya, Darlene" <dmontoya@nmag.gov>
Cc: Mark Cage <mcage@co.eddy.nm.us>, Arsenio Jones <ajones@co.eddy.nm.us>

Mon, Jan 23, 2017 at 2:19 PM

We will have something to you by the deadline.

From: Montoya, Darlene [mailto:dmontoya@nmag.gov]
Sent: Monday, January 23, 2017 2:02 PM
To: Jamie Rose <jrose@co.eddy.nm.us>
Cc: Mark Cage <mcage@co.eddy.nm.us>; Arsenio Jones <ajones@co.eddy.nm.us>
Subject: Re: Policies and Procedures related to Officer-Involved Shootings and Other Use of Force Incidents

[Quoted text hidden]

Montoya, Darlene <dmontoya@nmag.gov>
To: Jamie Rose <jrose@co.eddy.nm.us>
Cc: Mark Cage <mcage@co.eddy.nm.us>, Arsenio Jones <ajones@co.eddy.nm.us>

Mon, Jan 23, 2017 at 2:39 PM

Thank you so much. I will note it for them.
[Quoted text hidden]

Jamie Rose <jrose@co.eddy.nm.us>
To: "Montoya, Darlene" <dmontoya@nmag.gov>
Cc: Mark Cage <mcage@co.eddy.nm.us>, Arsenio Jones <ajones@co.eddy.nm.us>

Mon, Jan 23, 2017 at 3:26 PM

Darlene,

Here are the current SOP's for the department.

From: Montoya, Darlene [mailto:dmontoya@nmag.gov]
Sent: Monday, January 23, 2017 2:39 PM

[Quoted text hidden]

[Quoted text hidden]

2 attachments

 **Office Involved Shooting.pdf**
4143K

 **Use of Force.pdf**
1256K

NUMBER B23	EDDY COUNTY SHERIFF'S DEPARTMENT POLICY
EFFECTIVE DATE August 11 th , 2006 Revised January 12 th , 2007	
NO. PAGES 1 of 7	SUBJECT USE OF FORCE

POLICY:

Because the Eddy County Sheriff's Department (ECSO) recognizes the need for a balanced approach to a use of force policy, the ECSO policy is based on a balance between the protection of our personnel and the safety of the public. Also incorporated is the constitutional principle of due process. An extreme approach in either direction is contrary to the effective accomplishment of the ECSO mission. The ECSO must operate professionally within the parameters of this policy to ensure appropriate application of the use of force.

MISSION OF THE EDDY COUNTY SHERIFF'S DEPARTMENT

A. General

The Eddy County Sheriff's Department describes the mission as follows: the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of the ECSO that all enforcement personnel shall use only the amount of force reasonably necessary to bring an incident under control, while protecting the lives of the officer and others.

B. Purpose

The purpose of this policy is to provide the deputy with the guidelines on the use of deadly and non-deadly force.

PROCEDURES

JUSTIFICATIONS FOR THE USE OF FORCE

- A. Justification for the use of force must be based on what is reasonably known or perceived by the officer at the time.
- B. Facts discovered after the event, no matter how compelling, can not be used in later determining whether the use of force was justified.

PARAMETERS FOR THE USE OF DEADLY FORCE

- A. Deputies are authorized to fire their weapons in order to:
 - 1. Protect the deputy or others from what is reasonably believed to be an immediate threat of death or great bodily injury; or,
 - 2. Prevent the escape of a fleeing felon whom the deputy has probable cause to believe will pose a significant threat to human life should escape occur; or,
 - 3. Relevant factor in determining whether probable cause exist to believe that the fleeing felon will pose a significant threat to human life, including but not limited to, the nature of the felony an whether the felon is believed to be armed.
- B. Before using deadly force, deputies shall, where feasible, identify themselves and state their intent to shoot.
- C. A deputy may also discharge a weapon under the following circumstances:
 - 1. During range practice or sanctioned competitive sporting events;
 - 2. To destroy an animal that represents a threat to public safety or as a mercy measure where the animal is seriously injured.
- D. Deputies shall adhere to the following restrictions when their weapons are exhibited.
 - 1. Except for maintenance, inspection or training, deputies shall not draw or exhibit their weapon unless circumstances create a reasonable cause to believe that it may be necessary to use this weapon in conformance with this policy.
 - 2. Warning shots are prohibited;
 - 3. Weapons shall not be discharged if it appears likely that an innocent person may be injured.
- E. Notwithstanding the procedure outlined above, a deputy has the legal right to handle weapons, other than departmental weapons, for recreational purposes, in accordance with applicable laws and ordinances.

PARAMETERS FOR USE OF NON-DEADLY FORCE

- A. Where deadly force is not warranted, deputies should assess the incident in order to determine which non-deadly force technique or weapon will best de-escalate the incident and bring it under control in a safe manner.
-

- B. Deputies are authorized to use department approved non-deadly force techniques and issued equipment for the resolution of incidents, as follows:
1. To protect themselves or another from physical harm; or
 2. To restrain or subdue a resistant individual; or
 3. To bring an unlawful situation safely and effectively under control.

TRAINING AND QUALIFICATIONS

A. DEADLY WEAPONS

1. While on and off-duty, deputies shall carry weapons and ammunition authorized and registered with the department.
2. Authorized weapons are those with which the deputy has received training and displayed proficiency, proper safe handling and usage, and which are registered and comply with departmental specifications.
3. The department training officer will schedule semi-annual training and qualification sessions for duty, off-duty and specialized weapons in accordance with the departmental requirements and specifications.
4. All sworn personnel shall be issued copies of, and receive instruction on this policy prior to being authorized to carry a firearm.
5. All authorized armed enforcement personnel who fail to receive a passing score with their duty weapon(s) may be removed from duty in accordance with the qualification procedures outlined in the department's firearms training manual.
6. A deputy shall not be allowed to carry any weapon, which he/she has not been able to qualify with during the most recent qualification period.
7. A deputy who has taken an extended leave or suffered an illness or injury that could affect his/her firearms proficiency will be required to re-qualify before returning to enforcement duties.

B. NON-DEADLY FORCE WEAPONS AND METHODS

1. A deputy is not permitted to use a non-deadly weapon unless he/she is trained and qualified in its proficiency use as determined by training procedures.

2. The straight baton, expandable baton (ASP), TASER, O. C. Spray, bean bag rounds, chemical munitions are the only authorized weapons for use by members of this department.

REPORTING USE OF FORCE

- A. When a deputy is required to use any type of force, the deputy shall document the use of force in an incident report. If the force was used while assisting another agency, the deputy will provide a copy of the incident report to the agency which was assisted.
- B. In accordance with the department procedure, the on-duty supervisor shall be contacted for the purpose of initiating an immediate investigation in any of the following instances.
 1. When a firearm is discharged by a deputy either on or off-duty, except when discharged on an approved firing range or for legal recreation purposes.
 2. When the use of force results in death, great bodily harm, temporary disfigurement.
- C. The on-duty supervisor will be responsible for investigating and preparing a supplement report. All reports must be completed and submitted to the Patrol Lieutenant within 24 hours of being notified of the following:
 1. When a non-lethal weapon is used on a person.
 2. When a subject complains of an injury inflicted by a deputy using force.

DEPARTMENT RESPONSE

A. DEADLY FORCE INCIDENT:

1. When a deputies use of force causes death, the deputy shall be placed on administrative leave after the deputy has completed all internal investigative requirements, and until it is determined by a mental health professional that the individual is ready to return to duty.
2. The department shall conduct a administrative investigation and ensure a criminal investigation is conducted by an outside agency.

B. ADMINISTRATIVE REVIEW OF CRITICAL INCIDENTS:

1. All reported use of force cases will be reviewed by the Sheriff or his designee to determine whether:
 - a. Department rules, policy or procedures were violated;

- b. The relevant policy was clearly understandable and effective to cover the situation;
 - c. Department training is currently adequate.
- 2. All findings and policy violations or training inadequacies shall be reported to the Sheriff and to the appropriate unit for resolution and/or discipline.
- 3. All use of force complaints shall be retained in accordance with New Mexico state archives records retention schedules.
- 4. All use of force incident reports will be routed to the Sheriff or his designee, who will review the incident to identify training and policy needs.
- 5. An annual summary of all use of force incidents will be compiled by the patrol supervisor and provided to the Sheriff for review. The annual summary will also be made part of the department's annual report, published in April of each year. The department's training officer will be included and involved in the review process.

MEDICAL TREATMENT REQUIRED

A. WEAPONS

- 1. Any application of force, creating a direct physical impact, by use of firearm, baton, chemical agent, or TASER shall require the deputy to have the subject examined by EMS
 - a. The examination shall happen as soon as possible after the application of force, and prior to incarceration.

B. HAND-TO-HAND COMBAT

- 1. Any application of force, where there is direct physical impact, that causes visible injury or the complaint of injury, shall require the deputy to have the subject examined by EMS.
 - a. The examination shall occur as soon as possible after the application of force, and prior to incarceration.

C. DOCUMENTATION OF MEDICAL TREATMENT

- 1. The subject will be asked to sign a release of medical information waiver in order for the deputy to obtain copies of the physician's assessment of injuries. If the subject agrees, copies of the assessment will be obtained and attached to the deputy's incident report.

2. In the event that the subject refuses treatment, the subject will be asked to sign a treatment waiver.
 - a. If the subject agrees to sign the waiver, a copy will be included in the deputy's incident report.
 - b. If the subject refuses to sign the waiver, the deputy will note the refusal to sign with the physician or nurse witnessing the refusal to sign.
3. In the event that the visible injuries are inflicted, the on-duty supervisor shall assure the injuries are photographed, with the consent of the subject.
 - a. If the subject refuses to allow the photographs, this will be documented to include name(s) of witness(es) of the refusal.

USE OF FORCE MODEL

A. PURPOSE

In the effort to provide direction and assistance in determining the appropriate response to incidents encountered by enforcement personnel in the performance of their duties, the following guide has been adopted from the use of force model, developed by the New Mexico Law Enforcement Academy.

1. REACTIVE CONTROL MODEL (RCM)

B. Interpretation and Application

1. The model is designed and intended to provide the deputy with a readily available quick reference guide to determine an appropriate response to incidents of various threat levels. The RCM is to be used by the deputy to determine the appropriate course of action when interacting with subjects in situations, which may require force.
2. The RCM is used by analyzing the subject's behavior and general attitude at the time of the encounter or confrontation, by assessing behavioral cues exhibited and by determining the level of threat of criminal activity. Enforcement response/action to the subject's behavioral cues is outlined directly underneath the category boxes reflecting the subject's behavior.
3. Proper action in any situation is determined by reading the chart from top to bottom as through a perpendicular line where drawn from the subject's behavior indicators to the officer response area. Reading a course of action in an oblique line indicates insufficient force if the line is directed to the left, or excessive force if the line is directed to the right of the subjects behavior.

4. Color coding is used to designate the state of readiness the deputy should adopt given the situation depicted. Training on the application of the RCM will be conducted in conjunction with deadly force training.

Note: The RCM is a tool for the deputy to use as a guide in determining a reactive counter measure to a given incident where the execution of force is deemed necessary. The decision of what level of force to be utilized will be determined by the responding deputy, and will require articulation on his/her part as to the level of force used on a case by case basis.

(see attached RCM for analysis of appropriate responses to the level of threat perceived)

THIS POLICY REPLACES ALL PRECEEDING POLICIES, DIRECTIVES,
AND / OR MEMORANDUMS.

APPROVED

D. Kent Waller

01-12-07

D. KENT WALLER
SHERIFF
EDDY COUNTY, NEW MEXICO

DATE

NUMBER: B25	EDDY COUNTY SHERIFF'S DEPARTMENT POLICY
EFFECTIVE DATE: August 11 th , 2006	
NO. PAGES: 1 OF 25	SUBJECT: OFFICER INVOLVED FATAL INCIDENTS

I. STATEMENT OF PURPOSE

Investigations of fatal incidents involving police employees often place extraordinary demands upon the individuals and agencies involved. These cases tend to attract considerable interest from segments of the public and from the news media. The public's right to know what occurred may require balancing with investigative necessity, rights of privacy, or rights to a fair trial. Doubts may be expressed by some about the propriety of police agencies conducting investigations of fatalities which involved their own officers as actors or victims.

The individuals and agencies involved in such fatal incidents, as well as those involved in the subsequent investigations, must realize that each incident has potential social, civil, administrative, and criminal consequences. Incident investigators and agency managers must understand the legal right, obligations, and authority of the agencies and individuals involved. They must specifically recognize and reconcile police officers' constitutional rights against their rights and obligations resulting from the employer/agency relationship.

Confusion and even conflict can occur among individuals and agencies based upon their different interests, duties, perspectives, authority, training, and resources. Unless resolved in advance, questions such as who conducts the investigation, what type of investigation should be performed, and who can be present when a involved officer is interviewed, can delay and compromise investigations.

II. DEFINITIONS

A. Officer-Involved Fatal Incidents/Incidents

Incidents occurring in Eddy County involving two or more people, in which a police agency employee is involved as an Actor, Victim or custodial officer, where a "Fatal Injury" (see II. F.) occurs. Such "Incidents" include but are not limited to the following:

OFFICER INVOLVED FATAL INCIDENTS
Page 2.

1. Intentional and accidental shootings, including police tactical incidents involving specialized response teams.
2. Intentional and accidental use of any other dangerous or deadly weapons.
3. Assaults upon police officers; assaults on other police employees who are on duty or are acting for a law enforcement purpose.
4. Attempts by police employees to make arrests or to otherwise gain physical control for a law enforcement purpose.
5. Physical altercations, mutual combat, and domestic violence in which the police employee is acting in a private citizen capacity.
6. Any fatal injury in police custody, but excluding fatal injuries of prisoners which occur while the inmate is under physician's treatment for a disease or other natural condition which has been diagnosed prior to death and which does not involve custodial trauma, custodial suicide or custodial ingestion of toxic substance.
7. Any fatal injury to a person who is a passenger of a police officer (such as ride-alongs, emergency transports, etc.)
8. Vehicular collisions, and specifically
 - a. including any vehicle fatality which occurs:
 - (1) after, although not necessarily as a proximate cause of, police gunfire directed at the suspect or the suspect vehicle
 - (2) in connection with use of vehicle(s) by police as an "enforcement intervention" technique intended to apprehend a suspect. ("Enforcement intervention" includes vehicle ramming, roadblocks, and forcing a vehicle to alter its course by cutting in front of it or by contact.)
 - b. excluding any vehicle fatality which involves:
 - (1) off-duty non-sworn police employees who are not at the time of the Incident acting for an actual, apparent or purported law enforcement purpose;

- (2) solo vehicular collisions in which the only injury is suffered by a police employee who was the driver and sole occupant of a vehicle which was not involved in a collision with any other occupied vehicle;
- (3) police pursuits wherein the suspect vehicle which is being pursued by police vehicle(s) collides with another vehicle, a pedestrian or an object, where that collision did not result from collision contact between the suspect vehicle and a police vehicle or from "enforcement intervention". (See II. 8. a. 2.)

B. Police Employee

This Protocol applies to employees and to certain other people affiliated with the law enforcement agencies which are members of this Protocol agreement, as follows:

- 1. Full-time, part-time, and hourly sworn officers, Reserve, Mounted Patrol, whether on-duty or off-duty, and whether acting for a law enforcement or a private purpose at the time of the Incident;
- 2. Full-time unsworn employees who are on-duty at the time of the Incident, or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the Incident;
- 3. Part-time unsworn employees: same as above, full-time unsworn;
- 4. Reserve police or Mounted Patrol officers who are on-duty or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the Incident;
- 5. Temporary employees and volunteers whether paid or unpaid, who are on-duty or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the Incident. This category includes Informants when they are working under the direct control and supervision of a police officer.

C. Actor

- 1. A person whose act is a "proximate cause" of a fatal injury to another person;
or

2. A person who intends that his act be a "proximate cause" of serious bodily injury or death to another person who is actually killed by another.

D. Victim

The person that is injured by the act of the Actor, whether or not intentionally. When used in this Protocol, this word does not imply existence of criminality; it is used simply to designate the person who is physically injured.

E. Proximate Cause

A cause which, in a natural and continuous sequence, produces the fatal injury, without which cause the injury would not have occurred. Reasonable foreseeability of the fatal injury is not a factor relevant to this definition.

F. Fatal Injury

Death, or injury which is so severe that death is likely to result.

G. Venue Agency

The agency, or agencies, within whose geographical jurisdiction the Incident occurs.

H. Employer Agency

The agency by whom the involved police employee is employed or with which he/she is affiliated. (In many cases the Venue Agency will also be the Employer Agency.)

I. Criminal Investigators

Those investigators assigned by the Venue Agency(cies), the Employer Agency(cies), and the District Attorney's Office to conduct the criminal investigation of the Incident.

J. Administrative Investigators

Those investigators assigned by the Employer Agency to conduct the Administrative Investigation of the Incident.

K. Member Agencies

The law enforcement agencies in Eddy County which are members of this Protocol agreement.

III. INVOCATION OF THIS PROTOCOL

A. Automatic and Immediate

Upon the occurrence of an Officer-Involved Fatal Incident, this Protocol is automatically effective immediately upon the occurrence, unless Venue Agency elects not to invoke this protocol.

B. Optional

1. Each Member Agency of this agreement, when in the capacity of a Venue Agency or Employer Agency, may itself invoke this Protocol upon the occurrence of any sensitive or critical event involving a police employee which may have possible criminal liability attached. Upon this unilateral invocation, the matter will be investigated under the provisions of this Protocol.

a. Examples:

- (1) a fatality which is not covered by this Protocol
- (2) an officer-involved incident where the injuries are not fatal
- (3) any other sensitive or critical event involving a police employee where criminal conduct is a possibility to be investigated.

- b. The District Attorney has discretion to decline participation in optional invocations.

2. In lieu of invoking this Protocol, the involved agency(cies) may, of course, investigate the matter by itself or may seek aid from other agencies.

IV. INVESTIGATIVE AGENCIES, FORMATS AND RESPONSIBILITIES

To properly recognize and accommodate the various interests and the various rules of law which may be involved in any Incident, investigations of these matters must be performed under two separate investigative formats: (1) the Criminal Investigation; and the (2)

Administrative Investigation.

A. The Criminal Investigation

1. The Criminal Investigation has investigative priority over the Administrative Investigation and it begins immediately after an Incident has occurred.
2. It is performed by criminal investigators from the Venue Agency(cies), the Employer Agency(cies), and the District Attorney's Office formed into a Task Force for each Incident. The participating agencies are co-equal within the investigation, but the agency within whose geographical jurisdiction the Incident occurs has the ultimate authority to decide irreconcilable investigative issues.
3. Its goal is to develop all available relevant information about the Incident. This information will be used in two ways:
 - a. To determine presence or absence of criminal liability on the part of all those involved in the Incident. Specifically:
 - (1) To determine whether the nature and the quality of the conduct involved is prohibited by statutes which provide for criminal penalties upon conviction; and
 - (2) If criminal conduct does exist, determine the identity of the person(s) responsible for that conduct; and
 - (3) If criminal conduct does exist, determine the degree of the crime(s); the existence of any factual or legal defenses to that crime; and to determine the presence or absence of any factors which would mitigate or aggravate punishment for that crime.
 - b. To incidentally provide factual information to the Employer Agency's management for its internal use.

(While the Criminal Investigators do not direct their investigative attention to Administrative concerns, it is recognized that the Criminal Investigation's results are of proper interest to Agency Management for its internal use and those results are fully available for that purpose.)

4. The investigation is required to follow the rules of law which apply to all criminal proceedings including constitutional, statutory and case law regarding rights which are covered by the United States Constitution's 4th, 5th, 6th, and 14th Amendments.
5. The investigation is performed in a manner that provides both the appearance and the reality of a thorough, fair, complete and professional investigation which is free of conflicts of interest.
6. Within the Task Force, the Criminal Investigators will be divided into one or more teams (the number depending upon the complexity of the Incident and upon the number of people to be interviewed). Each team will consist of one criminal investigator from the Venue Agency(cies), the Employer Agency(cies), and from the District Attorney's Office. The Task Force investigation will be led by a primary team which is composed of the primary investigator from each of the Task Force agencies.
7. Venue Determination
 - a. When an Incident occurs in part in two or more jurisdictions, each of those jurisdictions is a Venue Agency.
 - b. When an Incident occurs on the boundary of two jurisdictions, or at a location where the relevant boundary is not readily ascertainable or is in dispute the Venue Agency(cies) shall be:
 - (1) the Employer Agency if the Actor is employed by either boundary agency
 - (2) both boundary agencies if Actors are employed by both
 - (3) the agency which has the greater interest in the case by virtue of having the predominant police involvement in the Incident or by virtue of having had the majority of acts leading up to the fatality occur within its jurisdiction
 - c. For custodial deaths, the agency having custody of the person at the time his/her distress was first discovered is a Venue Agency. Also a Venue Agency is the one within whose jurisdiction any fatal stroke was inflicted.

- (1) If the death was caused by conduct which was apparently criminal, the lead Venue Agency is one within whose geographical jurisdiction the act occurred.
 - (2) If there is apparently no criminal conduct involved in the cause of death, the lead Venue Agency is the one having custody of the victim when distress was first discovered.
 - d. If an on duty police officer (sworn) is involved as the Actor in an Incident which occurs within the jurisdiction of another Member Agency, and if that officer was acting in the performance of his/her duty at the time of the Incident, the Venue Agency may elect to relinquish its role in the Criminal Investigation to the other Task Force agencies.
8. When a Venue or Employer Agency lacks sufficient resources, or when it believes it cannot properly investigate an Incident for another reason, it has two options:
- a. Obtain criminal investigative assistance from other Member Agency(cies). Borrowed officers would then be assigned to the Criminal Investigation Task Force as members of the requesting agency.
 - b. Relinquish criminal investigative responsibility to another Member Agency.
9. Vehicle collision Incidents
- a. Accidental collision fatalities shall be investigated by Task Force criminal investigators (see IV. A.2.) The accident investigation specialists have the primary responsibility for documentation, collection and preservation of physical evidence.
 - b. If the fatality results from a collision that was not accidental (e.g. use of "enforcement intervention" techniques), OR if vehicle movement was merely incidental to a fatality which was caused by non-vehicular means, the accident investigation specialists may be used by the Task Force for that phase of the investigation, but their role will be limited to investigation of physical movement of the vehicle(s) and to collision reconstruction.

10. Scene Security

Each Agency has initial responsibility for immediately securing crime scene(s) within its territorial jurisdiction. This responsibility includes preservation of the integrity of the scene(s) and its/their contents, access control, and the identification and sequestration of witnesses. Responsibility may be changed by mutual agreement as the investigation progresses.

11. Responsibility for physical evidence collection, preservation and analysis

- a. The Venue Agency has the responsibility for documentation of the scene(s) and for the collection, preservation and analysis of physical evidence except in some vehicular fatalities. The task force also has the option to ask the Department of Public Safety Laboratory for assistance if deemed necessary.
- b. Pending arrival of Laboratory personnel, there are several important duties to be performed by police field evidence technicians or others;
- c. In unusual cases the Task Force agencies may all agree that the Laboratory need not be called to process the scene(s) and to collect evidence. The Laboratory shall be used if any Task Force agency desires.
- d. If an employee of the Laboratory is involved in an Incident as an Actor or as a Victim, the Laboratory will be disqualified from participation in the investigation of the Incident. These alternatives are available:

Trained and experienced evidence collection officers from Member Agencies, who will have full responsibility
For evidence work.

- e. The Venue or Employer Agency(cies) may be requested by the Laboratory to furnish officers to assist with evidence and scene documentation, collection and preservation. Officers so involved will work under the direction of the Laboratory's criminalists.

- f. Prior to final relinquishment of the scene, the Task Force investigators and the criminalists will provide the Administrative Investigators an opportunity to assess the need for further evidence processing.

12. Notifications

Upon identifying an occurrence as an Officer-Involved Fatal Incident, the Venue Agency(cies) shall make the following notifications as promptly as possible to:

- a. Intra-departmental officers, as required by that agency's procedures
- b. The Employer Agency, if applicable and if not yet aware
- c. The District Attorney's on call attorney (directly by telephone, or through Dispatch).
- d. The Venue agency's crime scene/evidence technician or the NMDPS crime lab.
- e. The Medical Examiner, upon confirmation of a fatality. This is a required notification. (Body removal can be delayed as necessary for evidence processing.)

13. Scene Procedures

- a. Emergency life saving measures have the first priority
- b. If a person is transported to a hospital with "fatal injuries" an officer should accompany that injured person in the same vehicle in order to:
 - (1) Locate, preserve, safeguard and maintain the chain on physical evidence.
 - (2) Obtain a dying declaration; a spontaneous statement; a contemporaneous statement; a statement of then-existing or previous mental or physical state.
 - (3) Maintain custody of the person if he/she has been arrested.

-
- (4) Provide information to medical personnel about the Incident as relevant to treatment, and obtain information from medical personnel relevant to the investigation.
 - (5) Identify relevant people, including witnesses and medical personnel.
 - (6) Be available for contacts with the victim's family, if appropriate.
- c. Speculation of causation relevant to the fatality is not to be discussed with family members.
- d. The scene(s) must be secured immediately with a perimeter established for each a sufficient distance away to safeguard evidence. In some circumstances an inner and an outer perimeter are appropriate.
- (1) Access to the scene(s) must be limited to only those officials who must enter for an investigative purpose.
 - (2) A written log will be established as quickly as possible to identify all persons entering the scene(s), the time of their entry and exit, and the reason for entry.
 - (3) When not needed for life savings efforts, entry by fire and ambulance personnel should be restricted to the absolute minimum necessary to perform the needed duties.
 - (4) No items shall be moved inside the scene(s) or removed from a scene without approval of the Task Force and the Criminalistics Laboratory/evidence technician unless absolutely necessary for public or officer safety or for preservation of evidence. If removal without approval is necessary, the removal must be witnessed and logged. The log shall state the identity of the person removing the described object, the reason for removal, a witness to the removal, and the time of removal. The item should be photographed prior to removal.
-

- c. If any type of weapon or instrument was involved in the fatal incident, the supervisor at the scene will promptly see to the security and/or collection of such items, as follows:
- (1) If the area is secure, loose weapons or instruments shall be left in place and undisturbed.
 - (2) If the area is not secure, the supervising officer at the scene shall decide whether the items can be safely left in place or whether prompt removal is necessary. If such items must be moved or removed for protection, they should be photographed in place prior to removal if possible. If possible, measurements of the item(s) location should be noted on a diagram.
 - (3) If an involved officer still has personal possession of a weapon he/she used in the Incident, the supervising officer at the scene shall promptly but discretely (i.e. in private, out of view of the public and other officers if possible) obtain possession of the weapon. Sidearms must not be removed from their holsters; obtain the entire gunbelt if necessary to avoid removing the weapon from its holster. Sidearms should be replaced by the supervisor as quickly as possible if the officer so wishes, unless reason dictates otherwise.
 - (4) In shooting cases, the supervising officer will check the firearms of all officers who were present at the time of the Incident to ensure that all discharged firearms are identified and collected, and to specifically document those weapons which were not fired.
 - (5) The supervising officer collecting any weapon or instrument will make note of its readily visible general description and condition, the appearance and the location of any trace evidence adhering, to the extent these observations can be made without removing a firearm from its holster or otherwise compromising physical evidence. The location where the weapon or instrument was first observed by the supervising officer, and the identity of the person or location from which the weapon or instrument was received shall also be recorded.

- a) In firearms cases, the supervising officer will also make note of whether the firearm is cocked, has its safety "on" or "off", has its hammer back, any apparent jamming of either fired or unfired ammunition; the location and position of the weapon's magazine (e.g. fully or partially inserted, completely separate from the firearm, missing, etc.), to the extent possible without removal of the weapon from its holster.
 - 1) If the mechanism of a firearm is obviously jammed, no attempt shall be made to unload the weapon or clear the jam.
 - 2) If the firearm is cocked (or if a semi-automatic pistol cannot be determined to be cocked or not), the safety may be put "on" by the supervising officer, who must make note of that fact. If the firearm's hammer is back, it may be lowered but note must be made of that fact.
 - b) Any officer receiving a weapon or instrument from another person or obtaining it otherwise shall note its serial number if readily visible without removing the weapon from its holster or otherwise compromising physical evidence and shall otherwise maintain the chain of evidence.
 - c) Otherwise, weapons and instruments will not be disturbed in any way. They shall not be handled by anyone other than the supervising officer and that officer shall handle them minimally to preserve the exact state of the weapon or instrument when received.
- (6) The collected weapons or instruments shall be transferred to the crime scene technician upon their arrival, along with the information required, to be documented by the supervisor in this section.

- (7) If the supervising officer at the scene was himself an Actor or Victim in the Incident, the responsibility for security and/or collection of weapons and instruments shall rest with an uninvolved supervisor or the next-in-line uninvolved officer at the scene.
 - (8) Twelve rounds of the same type(s) of ammunition fired will be collected by the criminal investigators from each shooting officer (or from another appropriate source if the officer has insufficient similar rounds remaining).
 - (9) Firearms which do not need to be retained in evidence, as determined by the criminal investigators, will be returned to a designated representative of the Employer Agency promptly after the Criminalistics Laboratory has inspected and tested them. The Laboratory appreciates that prompt return of officers' handguns is important, and will return them as soon as possible.
- e. Any other physical evidence at the scene which is in danger of being contaminated, destroyed or removed must be promptly and effectively observed, recorded and then protected for subsequent collection. Evidence adhering to live participants (such as blood stains), footprints and fingerprints, volatile substances, various types of trace evidence, and firearms discharge evidence, are examples.
- f. Transporting and Sequestering of Involved Officers
- (1) Officers who were present at the scene at the time of the Incident, whether Actors or Witnesses, will be relieved of their duties at the scene as promptly as possible and shall be sent to their own police station unless other suitable and agreeable arrangements are made for them. Officer(s) not involved in the Incident shall be assigned to accompany these officers, either in a group or individually. Actors should be driven to the station by an uninvolved officer.
 - (2) If circumstances prohibit removal of all witnessing and involved officers from the scene at once, those officers who were Actors should be relieved first.

- (3) An uninvolved officer shall remain with the involved officers, either in a group or individually, until they can be interviewed. The sequestering officers are present to ensure the officers have privacy, that their needs are accommodated, and to ensure the integrity of each officer's later statements to investigators. They should not be present during confidential (privileged) conversations.
- (4) Involved officers are not to discuss the case among themselves, with sequestering officers, or with others except their representatives.
- (5) While awaiting interviews, involved officers are encouraged to relax and to carefully reflect upon what occurred. They may wish to make notes for their future use, especially for later interviews.

g. Custodial Death scenes

When an Incident occurs in a jail facility or other location where inmates may have witnessed something, inmates should be identified and separated if possible pending interviews by criminal investigators.

14. Selection of Primary Investigators

Selection of the primary investigator(s) by the Task Force Agencies is of great importance. Generally, the best available investigator(s) should receive the assignment. These qualifications are important.

- a. Experience in homicide investigations (or vehicular collisions, if applicable). Investigation experience in other crimes against persons is helpful.
- b. Ability to effectively interview people of various backgrounds.
- c. Good working knowledge of physical evidence collection and preservation techniques, and an appreciation of the abilities and limitations of scientific evidence.
- d. Good knowledge of police operational procedures and the criminal justice system.

- e. Excellent report writing and communication skills.
- f. Good organizational and supervisory skills.
- g. Respected professionally by those with whom he/she works for being competent, thorough, objective, fair, and honest.

15. Interviewing Police Employees

a. Peace Officer's Employer-Employee Relations
(29-14-3 NMSA)

- (1) This statute has limited application to many interviews conducted by Task Force interview teams:
 - a. ** The granting of administrative "use" immunity or administrative "transactional immunity" to an interviewee is a serious and often complicated step that must be considered carefully. Early in the investigation, sufficient facts about the employee's conduct may not yet be available to allow an informed and correct decision to be made. Further investigation may reveal that any type of contemplated immunity is not warranted. The desired immunized statement may not actually be necessary or independent alternative means may exist to obtain the information. Authority within the Employer Agency to grant administrative immunity may need to be defined. When immunity is given, it must be carefully and narrowly defined in writing or on audio tape and agreed to by all effected parties.
 - b. If and when the interview becomes a custodial interrogation, the Miranda cases are applicable.
 - c. To insure proof of voluntariness in a non-custodial interview, the Task Force interviewers may wish to advise certain interviewees of the following:
- (2) The interviewee is not in custody and is free to leave at any time.

- (3) The interviewee is not obligated to answer any questions asked by the investigators and no punitive action will be taken against the interviewee if he/she refuses to be interviewed by the Task Force Team.
- b. Police employees have the same rights and privileges regarding Task Force interviews that any other citizen would have, including the right to consult with a representative prior to interview and the right to have the representative present during the interview.
 - (1) The representative should be allowed to consult about the facts of the incident privately with only one police employee at a time.

16. Intoxicant Testing

a. Criminal Investigation

Police employees have the same rights and privileges that any civilian would have regarding intoxicant testing. When Task Force investigators determine that a police employee's state of sobriety is relevant to the investigation, they have these options:

- (1) Obtain the blood and/or urine sample by valid consent.
- (2) Obtain the blood and/or urine sample incidental to valid arrest.
- (3) Obtain a search warrant.
- (4) When applicable, utilize Vehicle Code section 66-8-107 for vehicular driving Incidents.
- (5) If an arrestee refuses to comply with the request for a sample, attempts will be made to obtain the sample in accordance with case law.

b. Administrative Investigation

- (1) Intoxicant test results obtained by Task Force investigators are available to the Administrative Investigators.

- (2) In the event the Task Force does not obtain samples for intoxicant testing, the Employer Agency may then seek to obtain samples. The Task Force investigators have the first opportunity however.
 - (a) Authority for the Employer Agency to obtain samples includes (1) valid consent, and (2) ordering the employee to provide the samples based on the employment relationship.
 - (b) Some departments have blanket orders regarding employee intoxicant testing while other departments make decisions on a case-by-case basis.
- c. Miscellaneous
 - (1) Blood is the best fluid for alcohol testing, while urine is best for drug screening. Optimally, samples of both should be obtained for most complete results.
 - (2) Samples should be collected promptly after the Incident for most meaningful results.
 - (3) A police employee may volunteer to provide sample(s) for intoxicant testing even if Task Force and Administrative Investigators haven't obtained samples. Similarly, a person from whom Task Force or Administrative Investigators have obtained samples may request that another sample be taken for independent testing. The taking of this sample and subsequent testing will not be at the expense of the Task Force or Employer. Such a request will be promptly honored.

17. Autopsy

- a. At least one member of the Task Force's primary investigative team will attend the autopsy. When possible, the investigator from the District Attorney's Office should attend the autopsy. Investigators representing other Task Force agencies may also attend.
- b. The autopsy pathologist will receive a complete briefing prior to the post mortem examination. This briefing, which includes all

information known to that time which may be relevant to the cause, manner and means of death shall be attended by at least one member of the Task Force's primary team, and when possible the DA's investigator.

- c. For autopsies conducted in Eddy County, and for autopsies conducted in other Counties where the pathologist agrees, the Medical Examiner's Office has the responsibility for documenting and collecting physical evidence. In vehicular collision deaths the Venue Agency's Accident Investigator Specialist or other accident investigation specialists have the responsibility with assistance if appropriate from the Crime Laboratory.
- d. Although the Medical Examiner has authority to determine who attends an autopsy, it is usually advisable to allow attendance by a licensed medical doctor or licensed private investigator, or by a recognized professional criminalist, who has been retained by representatives of the decedent.

18. The District Attorney's Office

- a. The District Attorney's Office has the following roles in Incident Investigations:
 - (1) Participate co-equally with the Venue and Employer Agency(cies) and (when applicable) in the Task Force performing the criminal investigation.
 - (2) Assist and advise the Task Force on various criminal law issues which may arise, such as Miranda, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, legal defenses.
 - (3) Upon completion of the Criminal Investigation, analyze the facts of the Incident as well as the relevant law to determine if criminal laws were broken. If so, prosecute as appropriate.
- b. The District Attorney has his own separate investigative authority. When deemed appropriate by the District Attorney (or his designated alternate in his absence), the District Attorney's Office may perform an independent investigation separate from the Task Force.

19. Report writing

- a. All criminal investigators will write reports documenting their participation in the investigation.
- b. The investigators within each Task Force team will allocate and divide among themselves the responsibility for documenting interviews and observations.
- c. The lead Venue Agency has the ultimate responsibility for report writing and for collecting reports from other agencies.
- d. Prompt completion and distribution of reports is essential. All involved agencies and investigators will strive for report completion and distribution within 30 days after the Incident.

B. Administrative Investigation

- 1. In addition to its concern about possible criminal law violations by civilians and its own employees who are involved in an Incident (which concerns are addressed by the Criminal Investigation), the Employer Agency also has need for information about the Incident for non-criminal purposes:
 - a. Internal Affairs:

Determination of whether or not its employees violated departmental regulations.
 - b. Agency Improvement:

To determine the adequacy of its policies, procedures, programs, training, equipment, personnel programs and supervision.
 - c. Government and Community Relations:

To inform itself of the Incident's details so it may adequately inform its parent governmental body, and so it may be responsive to comments about the Incident from the public and the media.
 - d. Claims and Litigation:

To prepare for administrative claims and/or civil litigation that may be initiated by or against the agency.

2. The Employer Agency may use an Administrative Investigation and/or a more specific "civil litigation investigation" format to investigate these concerns as it considers appropriate. While both the Criminal Investigation and the Administrative Investigation are important and should be aggressively pursued, investigative conflicts between the two formats shall be resolved by allowing the Criminal Investigation to have investigative priority. It is intended that this prioritization will preclude competition between the two formats for access to witnesses, physical evidence, and the involved parties, and that it will prevent the Criminal Investigation from being compromised by an untimely exercise of the Employer Agency's administrative rights.
3. The initiation of Administrative Investigations and the extent of those investigations is, of course, solely the responsibility of the Employer Agency.
4. Interview statements, physical evidence, toxicology test results and investigative leads which are obtained by Administrative Investigators by ordering police employees to cooperate shall not be revealed to Criminal Investigators except when the District Attorney feels it is necessary. He will do this only after careful consideration about the consequences of such a decision. Other results of the Administrative Investigation may or may not be privileged from disclosure to others, including the Task Force investigators, depending upon applicable law.
5. The Employer Agency should immediately assign at least one Administrative Investigator upon being notified of the incident. This officer can function as a liaison between the Employer and Task Force, can gather information for the Agency, and can be the Task Force's contact for personnel matters, even if no actual investigation is then warranted by that officer.
6. The Task Force will promptly and periodically brief the Administrative Investigator(s) of the criminal investigation's progress. The Administrative Investigators will have access to briefings, the scene(s), physical evidence, and interviewees' statements.
7. Administrative Investigators are not bound by some of the same investigative restrictions that apply to Criminal Investigators. (U.S. Constitution 4, 5, 6, & 14th Amendments)

V. **NEWS MEDIA RELATIONS**

- A. The interests of the public's right to know what occurred must be balanced with the requirements of the investigation and with the rights of involved individuals.
- B. As in all other cases, care must be taken to insure that intentionally misleading, erroneous or false statements are not made.
- C. Agencies and individuals who are not well informed and not intimately involved with the investigation's results and progress should not make statements to the press.
- D. While any agency cannot be prohibited from making statements to the news media about an Incident, these guidelines are established:

- 1. The lead Venue Agency has the responsibility for making press releases about the Incident and its investigation. The lead Venue Agency will follow the guidelines in Attachment "A" when releasing information.
 - a. Prior to any release of information to the news media, the Department Public Information Officer must be contacted. If unavailable, the Agency Head will be contacted.
 - b. Officers in close contact with the Task Force are in the best position to comment about the facts of the case and the progress of the investigation. The person preparing any release should consult with the Task Force frequently for updates.
- 2. The Employer Agency.

If the Employer Agency is not also the Venue Agency, fewer problems will arise, especially at the early stages of the investigation, if the Employer Agency limits its comments to the following areas:

- a. The employer-employee relationship
- b. Factual material revealed by the Employer Agency's own Administrative Investigation of the Incident.
- c. Information which has been cleared for release by the Task Force through the Public Information Officer.

3. The New Mexico Department of Public Safety Crime Laboratory information released will usually be confined to general laboratory procedures, scientific facts and principles, and testing procedures. Specific results of searching, testing and analysis will generally not be released without clearance from an investigator from the Task Force's primary team.
4. The Medical Examiner's Office
Release of information will generally be limited to the following:
 - a. Autopsy findings, including the condition of the deceased, the cause of death, and toxicology test results, after the involved agencies have received this information.
 - b. The identity of those present at the autopsy, including the identity and affiliation of the pathologist(s).
 - c. The general nature of further medical testing or medical investigation to be done.
 - d. Information obtained by Medical Examiner's investigators directly from medical sources, the deceased's family members, or witnesses. Information obtained from the Incident Investigators or from the involved agencies will not be released by the Medical Examiner's Office without prior clearance from those agencies.
 - e. The role of the Medical Examiner's Office in the investigation of death, in general terms.
- E. If Task Force Investigators determine that the release of a specific piece of information would materially jeopardize the investigation, they shall notify those agencies possessing that knowledge of the hazards of releasing it.
- F. Interruptions to the investigators will be minimized if the agencies assign particular individuals to be the sole designated contacts with the news media. Some agencies have assigned media officers. Others may find it helpful to assign a temporary medical officer for these types of incidents.

VI. ACCESS TO REPORTS AND EVIDENCE

- A. Material which is created or collected by, or at the request or direction of, Task Force Criminal Investigators (including the NMDPS Crime Lab) will be made available in a timely manner to those agencies which have an interest in the investigation, including the Administrative Investigators.
- B. The material will include:
 - 1. Reports, written and collected.
 - 2. Access to physical evidence.
 - 3. Photograph, diagrams, and video tapes.
 - 4. Audio tape recordings.
- C. When the Task Force and/or District Attorney's Office concludes that the physical evidence collected by the Criminal Investigators is no longer needed for criminal law purposes, the Employer Agency shall be notified of that decision so it can assume responsibility for preservation of such evidence if it desires. It is then the responsibility of the employer agency to notify by letter, the officer(s) involved so that the officer(s) know the disposition of the evidence.

ATTACHMENT "A"

Format for Media Releases

The following outline will be followed when the Venue agency releases information to the media. The Venue agency has the option to ask another member agency to act as the media spokesperson. In all cases the initial spokesperson will remain the spokesperson for ALL releases for the duration of the investigation.

Information to be released:

Name of officer or officers
Name of victim or victims
Why police were responding to location of incident.
Where police responded.
Who is investigating.
Any action taken involving acting officers, i.e., administrative leave.

THIS POLICY REPLACES ALL PRECEEDING POLICIES, DIRECTIVES, AND / OR
MEMORANDUMS.

APPROVED

D. Kent Waller

07-24-06

D. KENT WALLER
SHERIFF
EDDY COUNTY, NEW MEXICO

DATE